
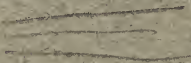


**FOREIGN TRADEMARKS
AND THE EXPORT TRADE
OF THE UNITED STATES
IN CENTRAL AND SOUTH
AMERICA**

UNIVERSITY OF ILLINOIS
30 NOV 1914


**A SUBJECT OF TOPICAL INTEREST
TO AMERICAN MANUFACTURERS
IN VIEW OF THE EUROPEAN WAR**

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LAWRENCE LANGNER

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FOREIGN TRADEMARKS AND THE EXPORT
TRADE OF THE UNITED STATES IN
CENTRAL AND SOUTH AMERICA.

At a time when most manufacturers in this country are adjusting their businesses to meet conditions created by the war in Europe, advantage is being taken of the opportunity afforded to increase the export business of the United States with the prosperous countries of Latin-America. Enterprising American manufacturers, realizing that the cessation of trade with Germany, which, with the falling off in exports from Great Britain and France, is causing an urgent demand in the Latin-American countries for American goods, are making strenuous attempts to supply these demands so as to compensate for losses of trade in Europe.

Those who have already been engaged in business in these markets are fully aware of the difficulties which lie in wait for the trader who is not properly advised as to the trade-mark laws of the countries in question, and American manufacturers about to develop their business in these countries will do well to make themselves acquainted with this aspect of the situation before taking advantage of the opportunity afforded for establishing a firm hold in the future expansion of trade in these markets.

30N14 - American Language

PIRACY OF TRADE-MARKS IN LATIN-AMERICAN COUNTRIES.

It cannot be too clearly impressed upon the American manufacturer that *if the owner of the trade-mark does not register it in most of the Latin-American countries, any other person may do so, thereby acquiring the exclusive right to the trade-mark notwithstanding the fact that the real owner may have used the mark for a number of years.*

European manufacturers and exporters have realized this fact in the past and make a point of complying with the domestic laws of these Latin-American countries. Many American manufacturers, however, do not appear to be fully aware of the conditions under which the trade-mark rights are acquired, and have come to feel consequently that the governments of these countries condone or legalize the piracy of their trade-marks.

That these conditions as to piracy are very real is evidenced by the following communication to a trade publication by the U. S. Consul-General to the Argentine Republic:

“The appropriation of foreign trade-marks has reached a very serious state in recent years, and if manufacturers do not wish to become the victims of unscrupulous business firms or individuals (provided some of them have not already experienced this sharp practice) they should take warning from the experience of others. Until the Argentine law is

changed the registry of trade-marks is the only way to combat with this class of men, who make it their object to profit by the brains and business ability of their superiors."

"If the Argentine firm usurps the mark of a foreign manufacturer and registers it, then the real owner is helpless, for the new owner can take legal action against the real owner of the mark for imitating or fraudulent use of same. The rightful owner may even have his merchandise excluded from the market simply because it bears his own mark. It has happened that foreign manufacturers have had to leave the market after having spent much time and money in building up their business, or have had to pay indemnity to a local firm which has been brazen enough to register a well-known mark."

"Not only do local manufacturers appropriate foreign trade-marks, but likewise mark their wares so as to convey the impression that they are of foreign manufacture, thereby increasing the fraudulent practice, and they carry this on by means of protective laws. Until such time as these evils are corrected, American manufacturers should see that their trade-marks are registered, provided the market is worth their time and attention."

No doubt there has often been much exaggeration on the part of injured parties, almost lending color to the belief that every native Latin-American is a rogue, yet there is no question that unscrupulous persons, taking advantage of the loop-hole left by the unsuspecting North-American trader, have pi-

rated his trade-marks and used them as means of extorting blackmail. In very rare instances, however, are trade-marks openly pirated, that is, it is very seldom that the mark is registered by a person other than the owner on the mere off-chance that at some later date the real owner will want to develop a trade in the country in question. The trade-mark pirate is rarely a speculator. As a general rule, trade-marks in these countries are pirated in order to obtain a business advantage to be turned to account in negotiating for an agency or other purposes.

FORMS OF PIRACY.

The commonest form of piracy is unquestionably that where the agent abroad registers in his own name the mark belonging to his principals in this country. His motives are plain. He wishes to insure that he shall permanently represent the manufacturers whose goods he is pushing. Unfortunately, there is a tendency on the part of these foreign agencies to mistrust their principals, and that is due to the fact that some American concerns, in their relations with their agents, have made no allowances for the differences between foreign and domestic trade methods, and have often unwittingly acted unjustly in changing their agency. In a number of instances, the first step taken by the agent in preliminarily arranging terms, etc., is to register the trade-mark of the American concern in his own name; negotiations are subsequently completed, and

the American exporter then finds himself unable at any time to make a change in his agency. In one such case, in Cuba, the agent for a large American concern took over the agency of a competing concern and used his ownership of the trade-mark of the first concern to kill any possible competition by them. Such instances can be multiplied, as many American exporters know to their cost.

IMPRISONMENT FOR INFRINGEMENT.

These conditions are rendered more serious by reason of the fact that infringement of a registered trade-mark in these Latin-American countries carries with it penalties more severe and damaging than in this country. As a general rule, infringement is a criminal offence, punishable by imprisonment, and involves confiscation of all goods sold under the infringing mark. There is on record the case of an Argentine concern ordering a shipment of goods from a well-known American firm and then attempting to register the mark of the American concern so as to be able to confiscate the goods upon their arrival in Buenos Aires. In another instance, a concern in Rio de Janeiro acted as agents for an American house, registered the marks of a competing American house, and then seized all the goods sold under the mark so registered. In some cases there has been a suspicion that unscrupulous American exporters have instructed their agents abroad to register the marks of a trade rival so as to gain an advantage over

him by the methods outlined above.

There is also on record a number of instances where the agent, often in good faith, will join with the American concern as part owner of the trade-mark and register it in this way, sometimes adding his own distinctive mark to the goods, and is thus in substantially the same position as he would be had he registered the mark in his own name.

HOW TO AVOID PIRACY.

Every manufacturer and exporter engaged in or intending to develop an export trade should make a point of registering his trade-marks in the countries under consideration before approaching any importing agency or representative. Above all things the registration of trade-marks abroad through a foreign trade agency or representative should be avoided. Such agencies or representatives have an immediate object for registering the marks in their own names. Most solicitors of patents and trade-marks in the U. S. have facilities for registering trade-marks abroad through foreign associates whose reputations are based upon professional integrity and whose only interests are those of their clients, and advantage should be taken of this as the safest method of procedure.

CONCLUSION.


This brief survey of trade-mark conditions in Latin-American countries seeks to make one pre-

dominating point; that the American exporter must protect his trade-marks by taking advantage of the domestic laws of the country in which he is operating, and not in spite of them. If those interested will apply the general rule NO PROTECTION WITHOUT REGISTRATION, the loss of valuable trade-mark rights abroad and the business confusion which inevitably follows will be a thing of the past.

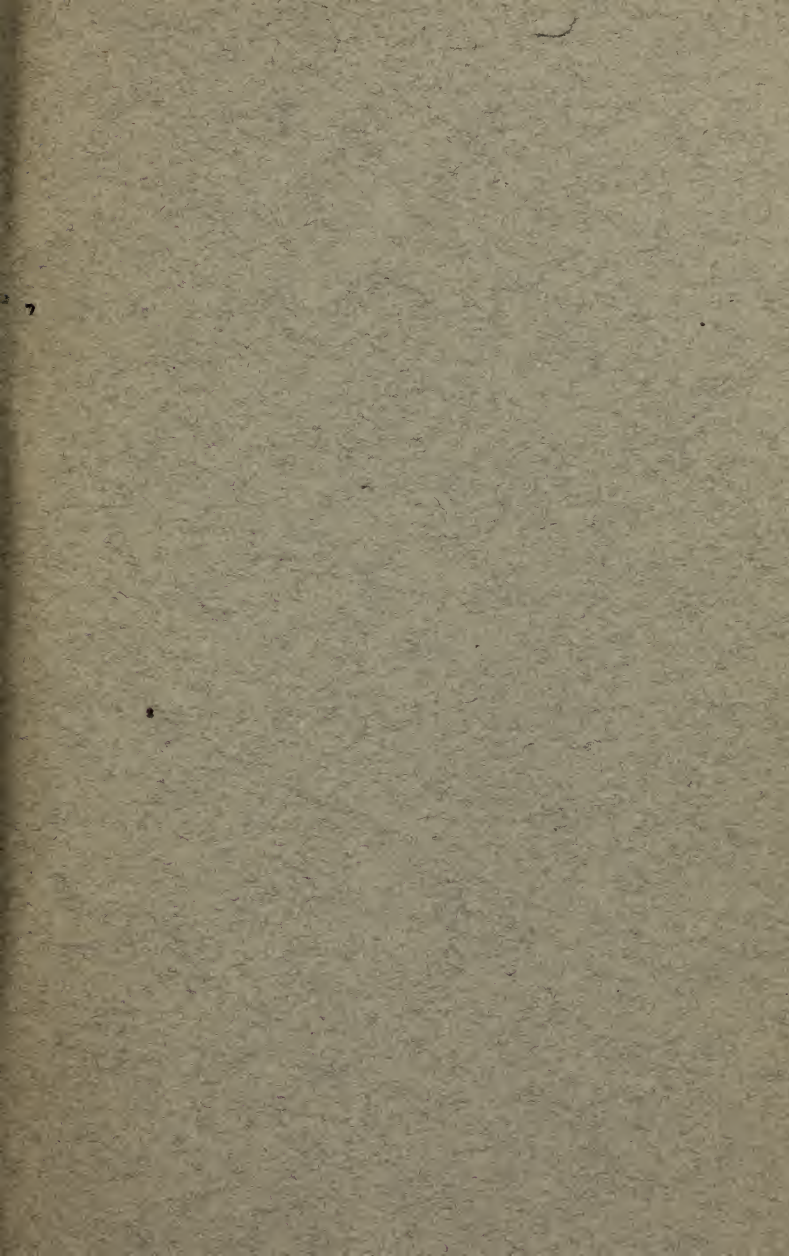
LAWRENCE LANGNER,

RIDSDALE ELLIS.

Aug. 20, 1914.



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